

NSW Electricity Networks Operations Pty Limited
as trustee for NSW Electricity Networks Operations Trust, trading as Transgrid
and
Energy Corporation of New South Wales

Project Development Deed

Waratah Super Battery Project

Execution Version

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This Deed is made on 17 October 2022

Parties

- 1 **NSW Electricity Networks Operations Pty Limited** (ACN 609 169 959) as trustee for NSW Electricity Networks Operations Trust (ABN 70 250 995 390), trading as Transgrid, of Level 1, 180 Thomas Street, Sydney NSW 2000 (**Transgrid**).
- 2 **Energy Corporation of New South Wales** (ABN 13 495 767 706) of 20 Bond Street, Sydney NSW 2000 (**EnergyCo**).

Recitals

- A On 30 June 2022, the Integrated System Plan published by AEMO under the National Electricity Rules identified the Sydney Ring (Reinforcing Sydney, Newcastle and Wollongong Supply) project and recommended a number of options, including virtual transmission – specifically a System Integrity Protection Scheme (**SIPS**) as part of a staged delivery (such as the Waratah super battery project).
- B On 2 August 2022, the Minister identified the Waratah super battery project as a priority transmission infrastructure project (**WSB PTIP**) under the EII Act and appointed EnergyCo as the Infrastructure Planner for the WSB PTIP.
- C Transgrid is the transmission network service provider for the NSW region and is a network operator for the purposes of the EII Act.
- D In exercising its functions under the EII Act and the *Energy and Utilities Administration Act 1987* (NSW) including as the Infrastructure Planner for the WSB PTIP, EnergyCo undertook a detailed planning and procurement process for the WSB PTIP. This included developing, in collaboration with Transgrid, the Transgrid WSB Delivery Plan to carry out the WSB PTIP.
- E EnergyCo, as Infrastructure Planner for the WSB PTIP, intends to recommend to the Minister that Transgrid, as network operator, be directed to carry out the WSB PTIP in accordance with the Transgrid WSB Delivery Plan, including entering into the Network Operator Deed with EnergyCo.
- F The parties have entered into this Deed to record certain arrangements between them.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

AEMO means Australian Energy Market Operator Limited.

Affected Party has the meaning given in clause 16.1(a).

Approval means:

- (a) any consent, authorisation, registration, filing, recording, agreement, notarisation, certificate, permission, licence, approval, permit, authority or exemption from, by or with, an Authority or judicial body; and
- (b) in relation to any act, matter or thing which may be proscribed or restricted in whole or in part by Law or otherwise if an Authority or judicial body intervenes or acts in any way within a specified period after lodgement, registration or other notification of the act, matter or thing, the expiration of the period without the intervention or action.

Authority means any government department, local government council, government or statutory authority, body, instrumentality, minister, agency or other authority exercising administrative or regulatory functions, but not including EnergyCo for the purposes of this Deed.

Bank Bill Rate has the meaning given in the SIPS Service Agreement.

Business Day means a day which is not a Saturday, Sunday or a public holiday in Sydney.

Claim means all claims, actions, disputes, proceedings, losses, liabilities, costs or expenses whether arising in contract, tort (including breach of statutory duty and negligence), equity or otherwise.

Contestable Determination means a determination issued by the Regulator under section 38 of the EII Act in respect of the Contestable Elements of the WSB PTIP.

Contestable Determination Application means an application to the Regulator for a Contestable Determination substantially in the form set out in Schedule 6 to the Network Operator Deed.

Contestable Elements has the meaning given in clause 1 of Schedule 2.

Data means all information in Transgrid's possession held by it on the Consultation Manager data management platform relevant to the development of the WSB PTIP.

Deed means this Project Development Deed.

Default means an EnergyCo Financial Default, a Transgrid Insolvency Default or a Non-Financial Default.

Default Notice means a notice served by a Non-Defaulting Party on a Defaulting Party in accordance with clause 17.1.

Defaulting Party means the party which has committed a Default.

Determination Application means the Contestable Determination Application or the Non-Contestable Determination Application or both, as the context requires.

Dispute means:

- (a) a disagreement or difference of opinion between the parties as to any matter in connection with this Deed, including any breach, termination, validity or its subject matter; or
- (b) except where provided otherwise, a failure of the parties to reach agreement on a matter where this Deed requires agreement or requires the parties to negotiate in good faith with a view to reaching agreement.

Dispute Notice has the meaning given in clause 20.4.

Dispute Resolution Procedures means the procedures set out in clauses 20.1 to 20.7

Effective Date means the date of this Deed.

EI Act means the *Electricity Infrastructure Investment Act 2020* (NSW).

EnergyCo Financial Default means a failure by EnergyCo to pay any amount due to Transgrid under and in accordance with this Deed, where such an amount is not the subject of a bona fide Dispute.

Excluded Event means:

- (a) any outbreak or spread of the coronavirus disease known as COVID-19, including any events, circumstances or conditions that may result therefrom; or
- (b) any event or circumstance occasioned by or in consequence of the impacts of Russia's war in Ukraine.

Excluded Loss means any:

- (a) loss of profit, revenue, opportunity, access to markets or anticipated savings;
- (b) damage to goodwill, reputation or credit rating; or
- (c) business interruption,

however arising in respect of any circumstances under or in connection with this Deed.

Facility has the meaning given in the SIPS Service Agreement.

First Nations Guidelines means the guidelines prepared in accordance with section 4(1) of the EI Act.

Force Majeure Event means a circumstance affecting a party that satisfies all of the following criteria:

- (a) the circumstance was not known or otherwise ought to have been known and could not have reasonably been foreseen, by that party as at the Effective Date (had they made reasonable inquiries in accordance with Good Industry Practice);
- (b) the circumstance is beyond the reasonable control of that party and, if Transgrid is the Affected Party, the reasonable control of the Transgrid Responsible Parties;
- (c) the circumstance is not the result of:
 - (i) a breach of this Deed or any relevant Law by that party;
 - (ii) an act or omission (other than an act or omission expressly required by, and carried out in accordance with this Deed) by that party; or
 - (iii) an Excluded Event;
- (d) the circumstance results in that party being unable to observe or perform on time and as required, any obligation (not being an obligation to pay money, or co-ordinate or consult with another party) under this Deed; and

- (e) the circumstance involves one or more of the following that is not an Excluded Event:
- (i) acts of God or natural disasters, including cyclone, typhoon, tornado, lightning strikes, earthquakes, floods, droughts, mudslides and washaways;
 - (ii) explosions or fires, except where the explosion or fire originates at the Facility and is caused by that party or that party's plant or equipment;
 - (iii) acts of war, acts of public enemies, terrorism, riots, civil commotions, hostilities (whether war be declared or not), malicious damage, sabotage, blockade and rebellion; or
 - (iv) ionising radiation or contamination by radioactivity from any source not caused or contributed to by that party.

Good Construction Industry Practice means the exercise of that degree of skill, care, diligence, efficiency, prudence and foresight that would be expected from skilled and experienced and internationally recognised designers, engineers and constructors of facilities of a similar type, size and value under conditions comparable to the WSB PTIP consistent with applicable Laws, Approvals, industry codes, standards, reliability, safety and environmental protection and carried out with due expedition.

Good Electricity Industry Practice means the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from a significant proportion of operators of facilities forming part of the power system for the generation, storage, transmission or supply of electricity under conditions comparable to those applicable to the WSB PTIP consistent with applicable Laws, reliability, safety and environmental protection. The determination of comparable conditions is to take into account factors such as the relative size, duty, age and technological status of the WSB PTIP and the applicable Laws.

Good Industry Practice means Good Construction Industry Practice or Good Electricity Industry Practice, as the case may be.

GST Amount has the meaning given in clause 23.1.

Independent Engineer means the independent engineer jointly appointed by EnergyCo and Transgrid pursuant to clause 12(a).

Information Barriers Agreement means the information barriers agreement between EnergyCo and Transgrid dated 26 April 2022, as amended, restated or supplemented by the parties in writing from time to time.

Infrastructure Planner has the meaning given in the EII Act.

Intellectual Property Rights means any intellectual or industrial property rights, whether registered or unregistered, including:

- (a) all patents, trademarks, copyright, designs, trade secrets, know-how and rights in confidential information (including the right to enforce an obligation to keep information confidential);
- (b) all licences and other rights to use or grant the use of any of the foregoing or to be the registered proprietor or user of any of the foregoing;
- (c) all computer programs, data and software, including source code; and
- (d) all user manuals, technical information and other documentation relating to the use or operation of the computer programs and other relevant systems.

Interim SIPS Service means a SIPS service capable of delivering the 'Interim Guaranteed Power and Storage Capacity' to increase transmission capacity for generation in regional NSW to supply

the Sydney / Newcastle / Wollongong region, which meets the 'Service Requirements' (each as defined in the SIPS Service Agreement).

Law means:

- (a) the common law;
- (b) all Acts of the Parliaments of New South Wales or the Commonwealth of Australia;
- (c) all regulations, codes, ordinances, local laws, by-laws, legislative instruments, orders, judgments, licences, rules and permits;
- (d) legally binding requirements of an Authority; and
- (e) the Regulatory Instruments.

Loss means losses, liabilities, claims, proceedings, actions, demands, damages, costs, charges, expenses or diminution in value, however arising, and whether present or future, fixed or unascertained, actual or contingent.

Management Plan means each plan specified in Schedule 4 which Transgrid must prepare in accordance with clause 13.2.

Minister means the NSW Minister responsible for administering the EII Act.

Ministerial Direction means the *Priority Transmission Infrastructure Project Direction (Waratah Super Battery Project) Order 2022* to be made by the Minister under section 32(1)(b) of the EII Act with respect to the WSB PTIP.

Munmorah Site means the site on which the Facility is to be constructed and located.

National Electricity Law means the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA) as it applies to New South Wales.

National Electricity Rules means the national electricity rules as defined in the National Electricity Law.

Network means the electricity transmission system in New South Wales.

Network Operator has the meaning given in the EII Act.

Network Operator Deed means the deed between EnergyCo and Transgrid to be entered into on or about the Effective Date.

NOD Effective Date means the date of the Network Operator Deed.

Nominated Executive Officer means, for each party, the persons nominated in writing to each other party from time to time.

Non-Contestable Determination means a determination issued by the Regulator under section 38 of the EII Act in respect of the Non-Contestable Elements of the WSB PTIP.

Non-Contestable Determination Application means an application to the Regulator for a Non-Contestable Determination.

Non-Contestable Elements has the meaning given in clause 2 of Schedule 2.

Non-Defaulting Party means the party not in Default.

Non-Financial Default means:

- (a) a party's failure to perform or comply with any of its obligations under this Deed, other than an EnergyCo Financial Default or a Transgrid Insolvency Default; and
- (b) in relation to Transgrid only, a repudiation of this Deed by Transgrid.

Notice Date has the meaning given in clause 20.5(a).

NSW Government Policies has the meaning given in clause 13.1(a).

Operating Committee has the meaning given in clause 2.3(a) of Schedule 1.

Paired Generation Services means participation in a control scheme by persons selected by EnergyCo pursuant to a competitive procurement process from time to time, whereby, among other elements relating to the discharge of the Facility, the paired generation facility automatically responds to an external signal received from Transgrid and immediately commences linear ramping of the actual capacity of the paired generation facility so as to reduce the line loading downstream of the point of connection.

PDD Intellectual Property Rights has the meaning given in clause 11.2(a).

PDD Services Payments has the meaning given in clause 14.1.

Personal Information means personal information (as defined in the Privacy Act) that is disclosed by Transgrid to EnergyCo under this Deed.

Personnel means, in relation to a person, its directors, officers, employees, agents, consultants, contractors and Suppliers.

Privacy Act means the *Privacy Act 1988* (Cth) (including the Australian Privacy Principles under that Act).

Probity Framework has the meaning given in clause 6.2(a).

Project Definition and Design Services or **PDD Services** means the activities set out in Schedule 1.

Regulator means the regulator appointed for the purposes of Part 5 of the EII Act, which, as at the Effective Date, is the Australian Energy Regulator.

Regulatory Instruments means:

- (a) the National Electricity Law and National Electricity Rules;
- (b) any other Law that has the effect of regulating the electricity industry in New South Wales; and
- (c) any licence a party holds regulating its activities and any code, guidelines, direction or other document that party is required to comply with under that licence.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth) and in relation to EnergyCo also means the Minister and any NSW Authority.

Renewable Energy Sector Board means the board for manufacturing and construction in the NSW renewable energy sector established under section 7 of the EII Act.

Renewable Energy Sector Board Plan means the plan prepared by the Renewable Energy Sector Board, and approved by the Minister under section 8(3) of the EII Act.

Services Payment Adjustment has the meaning given in clause 7.3(b)(ii).

SIPS Service means a SIPS service capable of delivering the 'Guaranteed Power and Storage Capacity' to increase transmission capacity for generation in regional NSW to supply the Sydney / Newcastle / Wollongong region, which meets the 'Service Requirements' (each as defined in the SIPS Service Agreement).

SIPS Service Agreement means the SIPS Service Agreement – Waratah Super Battery Project – WSB850 between Transgrid and Munmorah Battery ProjectCo Pty Ltd (ACN 662 894 699) to be entered into on or about the Effective Date, substantially in the form set out in Schedule 1 to the Network Operator Deed.

Supplier means a person engaged to perform any part of the WSB PTIP:

- (a) by Transgrid directly; or
- (b) indirectly, by a series of subcontracts or supply agreements, including consultants, vendors and suppliers, but excluding employees of Transgrid.

Term means the term of this Deed as provided in clause 2.

Transgrid Insolvency Default means any of the following events or circumstances occurring in relation to Transgrid:

- (a) a receiver, manager, receiver and manager, trustee, administrator, Controller or similar officer is appointed in respect of the Transgrid or any asset of Transgrid;
- (b) a liquidator or provisional liquidator is appointed in respect of Transgrid;
- (c) any application (not being an application withdrawn or dismissed within 10 Business Days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraph (a) or (b);
 - (ii) winding up of Transgrid; or
 - (iii) proposing or implementing a scheme of arrangement in respect of Transgrid (other than as part of a solvent reconstruction, amalgamation, merger or consolidation);
- (d) a moratorium of any debts of the person or any official assignment or a composition or an arrangement (formal or informal) with Transgrid's creditors or any similar proceeding or arrangement by which the assets of Transgrid are subjected conditionally or unconditionally to the control of Transgrid's creditors is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 10 Business Days (unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation);
- (e) Transgrid takes any step to obtain protection, or is granted protection, from its creditors under any applicable Law;
- (f) Transgrid becomes, admits in writing that it is, is declared or is deemed under any applicable Law to be, insolvent or unable to pay its debts;
- (g) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of Transgrid which is material in the context of this Deed (and which is not withdrawn or dismissed within 10 Business Days); or
- (h) any act is done or event occurs which under the Laws from time to time of a country other than Australia has an analogous or similar effect to any of the events in paragraphs (a) to (g).

Transgrid Responsible Parties means all of the following:

- (a) Transgrid;
- (b) each Personnel of Transgrid;
- (c) each Related Body Corporate of Transgrid;
- (d) each Personnel of such Related Body Corporate;
- (e) each Supplier; and
- (f) each Personnel of each Supplier.

Transgrid WSB Delivery Plan means the delivery plan appended to the Network Operator Deed at Schedule 2.

Trust means the NSW Electricity Networks Operations Trust (ABN 70 250 995 390).

Trustee means NSW Electricity Networks Operations Pty Limited (ACN 609 169 959) as trustee of the Trust.

Variation has the meaning given in clause 7.3(a).

Variation Proposal has the meaning given in clause 7.3(b).

Variation Request has the meaning given in clause 7.3(a).

WSB PTIP has the meaning given in Recital B.

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) The following rules apply unless the context requires otherwise.
 - (i) The singular includes the plural, and the converse also applies.
 - (ii) A gender includes all genders.
 - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
 - (v) A reference to a clause or Schedule is a reference to a clause of or Schedule to, this Deed.
 - (vi) A reference to an agreement or document, including a reference to this Deed, is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
 - (vii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
 - (viii) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
 - (ix) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
 - (x) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
 - (xi) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
 - (xii) A reference to *dollars* or \$ is to Australian currency.

- (xiii) A reference to a *right* or *obligation* of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (xiv) A reference to an *asset* includes any real or personal, present or future, tangible or intangible property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived from the property or asset.
- (xv) A reference to time is to Sydney time.
- (xvi) A reference to an amount for which a person is contingently liable includes an amount that that person may become actually or contingently liable to pay if a contingency occurs, whether or not that liability actually arises.
- (xvii) A *month* means a calendar month.

1.3 Time

- (a) If a period of time is specified and the period dates from a given day or the day of an act or event, it is to be calculated exclusive of that day and, if a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of that day.
- (b) Where the day on or by which any sum is payable is a day other than a Business Day, that sum must be paid on the immediately subsequent Business Day.
- (c) If a payment prescribed under this Deed to be made by a party on or by a given Business Day is made after 4pm on that day, it is taken to be made on the next Business Day.

1.4 Precedence

In the case of any inconsistency, ambiguity, discrepancy or inadequacy in the documents forming this Deed, the priority of the documents will be in accordance with the following sequence:

- (a) operative provisions; and
- (b) the schedules.

1.5 Resolution of Ambiguity

If a party becomes aware of any ambiguity, discrepancy or inconsistency between, or within, the schedules and the operative provisions of this Deed, then:

- (a) it must promptly notify the other party;
- (b) within 5 Business Days of notification of an ambiguity, discrepancy or inconsistency under paragraph (a), the parties must meet with a view to agreeing in good faith on the interpretation of the ambiguity, discrepancy or inconsistency, in accordance with the principle set out in clause 1.4. Failing agreement within 5 Business Days of that meeting, EnergyCo may notify Transgrid about the interpretation that will apply in order to resolve the ambiguity, discrepancy or inconsistency; and
- (c) a notification by EnergyCo under paragraph (b) will neither entitle Transgrid to make a Claim against EnergyCo, nor form the basis of a Dispute.

2 Term

The Term will commence on the Effective Date and will continue until the 'Service Period End Date' (as defined in the SIPS Service Agreement), unless terminated earlier in accordance with this Deed.

3 Legal Capacity

3.1 EnergyCo legal capacity

The parties acknowledge that EnergyCo:

- (a) performs a number of functions in relation to the NSW electricity supply industry;
- (b) has been appointed as Infrastructure Planner with respect to the WSB PTIP in accordance with the EII Act; and
- (c) enters this Deed in its capacity as the Infrastructure Planner for the WSB PTIP.

3.2 Transgrid legal capacity

The parties acknowledge and agree that Transgrid:

- (a) is the 'Primary Transmission Network Service Provider' (as that term is defined in the National Electricity Rules) with respect to the Network and performs a number of functions in relation to the NSW electricity supply industry;
- (b) enters into this Deed in order to assist EnergyCo to meet the delivery timetable for the WSB PTIP; and
- (c) if directed as Network Operator to carry out the WSB PTIP in accordance with the EII Act, must enter into the Network Operator Deed:
 - (i) in its capacity as the Network Operator; and
 - (ii) pursuant to a ministerial direction given under section 32(1)(b) of the EII Act.

3.3 Relationship between the parties

Nothing in this Deed will be construed or interpreted as:

- (a) conferring a right in favour of either EnergyCo or Transgrid to enter into any commitment on behalf of the other or otherwise to act as the other's agent; or
- (b) creating a partnership, joint venture or fiduciary relationship between EnergyCo and Transgrid.

3.4 No fetter

- (a) Despite any other provision of this Deed:
 - (i) this Deed does not bind the Minister; and
 - (ii) nothing in this Deed will be construed or interpreted as unlawfully restricting or otherwise unlawfully affecting the unfettered discretion of the Minister to exercise any of its executive or statutory powers or functions under any Law.
- (b) Despite any other provision of this Deed, nothing in this Deed will be construed or interpreted as restricting or otherwise affecting Transgrid's obligations to comply with:
 - (i) the terms of its transmission operator's licence (currently issued under the *Electricity Supply Act 1995* (NSW)); and

- (ii) the National Electricity Rules as a registered 'Network Service Provider' and 'Primary Transmission Network Service Provider' (each as defined in the National Electricity Rules).

4 Cooperation

4.1 Conduct

Each party agrees to act:

- (a) reasonably in performing its obligations and exercising its rights under this Deed; and
- (b) in good faith and in a collaborative, co-operative and diligent manner,

with the objective of achieving delivery of the WSB PTIP in a safe, reliable, cost-effective and timely manner.

4.2 EnergyCo to support Transgrid

EnergyCo must use reasonable endeavours to cooperate with, and provide such reasonable assistance to, Transgrid as is necessary to support Transgrid in:

- (a) its liaison with AEMO, the Regulator and other agencies, including by coordinating actions and engagement;
- (b) any Determination Application for the amount payable to the Network Operator in connection with carrying out the WSB PTIP, including by seeking to accelerate the Regulator's approval timeframe for the Non-Contestable Elements of the WSB PTIP; and
- (c) connecting to the Munmorah Site.

4.3 Transgrid to support EnergyCo

Transgrid must use reasonable endeavours to cooperate with, and provide such reasonable assistance to, EnergyCo as is necessary to:

- (a) support EnergyCo in its liaison with AEMO, the Regulator and other agencies as it relates to the WSB PTIP, including by coordinating actions and engagement;
- (b) support EnergyCo to design and implement a strategy to ensure that the connection application for the Facility at the Munmorah Site can be processed as quickly as possible;
- (c) provide technical advice as reasonably requested by EnergyCo to assist EnergyCo in relation to relevant planning and environmental approvals for the WSB PTIP; and
- (d) provide such reasonable assistance as is necessary to support EnergyCo with the procurement of Paired Generation Services.

5 Transgrid to Prepare to Carry out WSB PTIP

Transgrid agrees to assist EnergyCo to meet the delivery timetable for the WSB PTIP in accordance with this Deed, including by:

- (a) undertaking the PDD Services pursuant to clause 7;
- (b) preparing to perform its obligations with respect to the Determination Applications under clause 11 of the Network Operator Deed;
- (c) complying with the probity requirements in clause 6.2; and
- (d) complying with its obligations in relation to government policies and the Management Plans in clause 13.

6 Probity

6.1 Acknowledgements

The parties acknowledge and agree that EnergyCo has strict probity requirements that will remain in place throughout the entirety of the WSB PTIP with which both parties must comply.

6.2 Probity Framework

- (a) Each party must prepare to implement on and from the NOD Effective Date a probity framework for the WSB PTIP that meets the requirements set out in paragraph (b) (the **Probity Framework**).
- (b) The Probity Framework must set out probity requirements consistent with the party's role in the WSB PTIP and the standards that would reasonably be expected of the party, including with respect to:
 - (i) compliance with legal and policy requirements;
 - (ii) consideration of competitive requirements;
 - (iii) fairness and impartiality;
 - (iv) consistency and transparency of process;
 - (v) security and confidentiality; and
 - (vi) identification and declaration of conflicts of interest.

7 Project Definition and Design Services

7.1 EnergyCo's ability to request

- (a) In order to assist EnergyCo to meet the delivery timetable for the WSB PTIP, Transgrid must undertake, or procure the undertaking of, the PDD Services, including by providing to EnergyCo the deliverables set out in Schedule 1 (as may be amended pursuant to a Variation).
- (b) Transgrid agrees to carry out the PDD Services in accordance with:
 - (i) Schedule 1;
 - (ii) all applicable Laws, Approvals, standards and codes;
 - (iii) Good Industry Practice; and
 - (iv) this Deed.
- (c) Transgrid acknowledges and accepts that EnergyCo is relying on Transgrid to perform the PDD Services in accordance with Good Industry Practice so as to satisfy the requirements stated in Schedule 1.

7.2 Progress of PDD Services

- (a) Transgrid will perform the PDD Services with due expedition and without delay, and in accordance with any applicable timeframes set out in Schedule 1 for completion of the PDD Services (as may be amended pursuant to a Variation).
- (b) Transgrid will keep EnergyCo regularly informed regarding the progress of the PDD Services.

7.3 Variations to scope of PDD Services

- (a) EnergyCo may, at any time, request that the scope of PDD Services as set out in Schedule 1 be expanded, reduced or varied (**Variation**), by issuing a notice to Transgrid that sets out the following:
- (i) the Variation; and
 - (ii) the work required, no longer required or varied, (**Variation Request**).
- (b) As soon as reasonably practicable and in any event within 10 Business Days (or such other time as agreed between the parties, acting reasonably) after Transgrid receives EnergyCo's Variation Request, Transgrid must issue a written proposal to EnergyCo setting out details of:
- (i) any additional deliverables or changes required to the deliverables set out in Schedule 1 (as applicable);
 - (ii) for Variations that materially expand, reduce or vary the scope of PDD Services as set out in Schedule 1, any adjustment to the PDD Services Payments (**Services Payment Adjustment**); and
 - (iii) where there are relevant timeframes for the completion of the particular PDD Services set out in Schedule 1 that are affected by the Variation Request, any adjustments to those timeframes, and any new timeframes to be included in Schedule 1 for any additional works, as a result of the Variation Request (**Variation Proposal**).
- (c) If EnergyCo accepts the Variation Proposal, Transgrid must perform the Variation and:
- (i) the scope of PDD Services set out in Schedule 1 will be adjusted in accordance with the Variation Proposal;
 - (ii) the deliverables and timeframes (as applicable) set out in Schedule 1 will be adjusted, and any new deliverables and timeframes (as applicable) will be included in Schedule 1, in accordance with the Variation Proposal; and
 - (iii) the PDD Services Payments under clause 14 and Schedule 3 will be adjusted to reflect the Services Payment Adjustment (if applicable).

7.4 Suspension of PDD Services

- (a) If the Ministerial Direction is not issued by 31 December 2022, EnergyCo may direct Transgrid to suspend some or all of the PDD Services.
- (b) If all of the PDD Services are suspended pursuant to paragraph (a), for a continuous period exceeding six months (or such other period as agreed between the parties), EnergyCo may, by written notice to Transgrid, effective immediately, terminate this Deed and clause 17.7 will apply.

8 Section 38 Determinations

On and from the Effective Date, Transgrid must prepare to perform its obligations under clause 11 of the Network Operator Deed, in accordance with the timeframes set out in clause 11 of the Network Operator Deed.

9 Reporting

9.1 General

Transgrid must:

- (a) perform the reporting obligations in respect of the PDD Services set out in clause 9.2;
- (b) prepare and maintain records demonstrating the progress of the performance of Transgrid's other obligations under this Deed; and
- (c) provide to EnergyCo any information reasonably requested by EnergyCo in relation to any matter arising in connection with the preparation for the carrying out of the WSB PTIP.

9.2 PDD Services

- (a) Transgrid must provide to EnergyCo monthly reports demonstrating the progress of the PDD Services, which must include details of:
 - (i) the PDD Services performed and the deliverables provided to EnergyCo since the previous progress report;
 - (ii) any issues encountered or delays that Transgrid has become aware of in relation to the performance of the PDD Services, and the actions taken by Transgrid in response; and
 - (iii) the PDD Services expected to be performed in the following month.
- (b) Unless otherwise agreed by the parties, the parties must meet within 10 Business Days after EnergyCo receives a monthly progress report from Transgrid, to discuss the monthly progress report.

10 Access to Data, Documents and Information

- (a) Subject to EnergyCo's compliance with the data storage principles set out in Schedule 5, Transgrid must, upon request by EnergyCo, provide EnergyCo with access to data, documents and information that is relevant to or produced in connection with the performance of the PDD Services, including:
 - (i) network modelling and power system analysis study files in relation to the WSB PTIP;
 - (ii) SIPS design details, including the protection scheme, pairing generator information and related materials;
 - (iii) detailed line upgrade design and updated parameters; and
 - (iv) battery models and connection study outcomes via the battery connection process.
- (b) To the extent that the PDD Services are required in order to facilitate the Contestable Elements of the WSB PTIP, Transgrid must ensure that:
 - (i) it can provide EnergyCo (or its nominee) with copies of all reports and information produced or obtained in relation to those PDD Services;
 - (ii) where possible, it transfers to EnergyCo (or its nominee) any authorisation or Approval obtained by Transgrid in relation to those PDD Services; and
 - (iii) all the rights and obligations in all contracts entered into by Transgrid in relation to those PDD Services are capable of being assigned or novated to EnergyCo (or its nominee).

11 Intellectual Property Rights

11.1 Creation by EnergyCo

The parties acknowledge and agree that, to the extent that:

- (a) any Intellectual Property Rights are created by EnergyCo or any of its Personnel (other than Transgrid) in the performance of activities relating to the Contestable Elements of the WSB PTIP; and
- (b) Transgrid or any of its Personnel has contributed to or assisted with those activities, those Intellectual Property Rights vest in EnergyCo with Transgrid receiving a non-exclusive, perpetual, royalty free licence (including the right to sub-licence) to use any such Intellectual Property Rights for the purposes of the WSB PTIP.

11.2 Creation by Transgrid

- (a) The parties acknowledge and agree that, to the extent that:
 - (i) any Intellectual Property Rights are created by Transgrid or any of its Personnel in the performance of activities relating to the PDD Services; and
 - (ii) EnergyCo or any of its Personnel (other than Transgrid) has contributed to or assisted with those activities, those Intellectual Property Rights vest in Transgrid (**PDD Intellectual Property Rights**).
- (b) To the extent that the PDD Services are required in order to facilitate the Contestable Elements of the WSB PTIP, Transgrid must ensure that EnergyCo (or its nominee) receives a non-exclusive, perpetual, royalty free licence (including the right to sub-licence) to use any such PDD Intellectual Property Rights for the purposes of the WSB PTIP.
- (c) To the extent that the PDD Services are required in order to facilitate the Non-Contestable Elements of the WSB PTIP, Transgrid must ensure that:
 - (i) all authorisations and rights against third parties which are a deliverable are obtained in the name of and for the benefit of Transgrid; and
 - (ii) EnergyCo receives a non-exclusive, perpetual, royalty free licence (including the right to sub-licence) to use all PDD Intellectual Property Rights for the purposes of the WSB PTIP.

11.3 Arrangements with third parties

Transgrid must ensure that its arrangements with third parties enable it to freely licence to EnergyCo (or its nominee) all Intellectual Property Rights in the deliverables set out in Schedule 1 in accordance with its obligations under this clause 11.

12 Independent Engineer

- (a) The parties agree to jointly appoint an Independent Engineer for the WSB PTIP, after the NOD Effective Date.
- (b) Where directed by EnergyCo, Transgrid must provide the Independent Engineer with copies of the design, works, operations, testing and commissioning plans.
- (c) The parties must use their reasonable endeavours to prepare to agree on the scope of the Independent Engineer's role and the functions to be performed by the Independent Engineer in respect of the WSB PTIP, as soon as practicable after the NOD Effective Date.

13 Government Policies and Management Plans

13.1 NSW Government Policies

- (a) Subject to paragraph (b), Transgrid must take all reasonable actions to:
 - (i) provide information and data;
 - (ii) undertake relevant reporting and other promotion and marketing activities; and
 - (iii) provide all other assistance reasonably required by the NSW Government, for the purposes of any policies issued by the NSW Government relating to:
 - (iv) renewable energy projects;
 - (v) energy initiatives; or
 - (vi) the EII Act,(the **NSW Government Policies**).
- (b) EnergyCo must provide Transgrid with at least 10 Business Days' notice of any NSW Government Policy where Transgrid's assistance and cooperation is required.
- (c) EnergyCo must provide all reasonable assistance to Transgrid in carrying out its obligations contemplated in paragraph (a).
- (d) Transgrid is responsible for:
 - (i) all costs associated with carrying out its obligations under this clause 13.1; and
 - (ii) keeping up to date with any changes to the NSW Government Policies, provided that EnergyCo must use reasonable endeavours to notify Transgrid of relevant changes to the NSW Government Policies.

13.2 Management Plans

- (a) Transgrid must prepare to implement each Management Plan on and from the NOD Effective Date.
- (b) Each Management Plan must be prepared in accordance with Good Industry Practice and set out, in respect of its subject matter, how Transgrid will discharge its relevant obligations under this Deed and the Network Operator Deed and under all applicable government policy, Laws and Approvals.
- (c) Transgrid must provide to EnergyCo any other information reasonably requested by EnergyCo in relation to any matter arising in connection with the Management Plans.

14 Payment for PDD Services

14.1 PDD Services Payments

EnergyCo must pay the PDD Services Payments set out in Schedule 3 (as may be adjusted by any Services Payment Adjustment under clause 7.3(c)(iii)) to Transgrid in accordance with this clause 14 and Schedule 3 (**PDD Services Payments**).

14.2 Invoice

- (a) Transgrid will issue to EnergyCo within 10 Business Days after the date that each milestone as set out in Schedule 3 is achieved, an invoice for the amounts payable under this Deed for the achievement of that milestone as set out in Schedule 3. The invoice must be valid for GST purposes and will contain the following information:
 - (i) particulars of the PDD Services Payments payable by EnergyCo;

- (ii) any relevant Services Payment Adjustments; and
 - (iii) where relevant, sufficient information and evidence in relation to such PDD Services Payments that EnergyCo may require to reasonably verify the basis of the PDD Services Payments.
- (b) EnergyCo must pay Transgrid those PDD Services Payments as set out in the invoice issued by Transgrid under paragraph (a) within 20 Business Days of receipt of an invoice from Transgrid.

15 Insurance

- (a) Transgrid must effect and maintain the following insurance policies:
- (i) professional indemnity insurance for at least [REDACTED] for each claim and in the aggregate for the annual term of the policy;
 - (ii) public liability insurance for at least [REDACTED] for each claim and in the aggregate for the annual term of the policy; and
 - (iii) workers compensation insurance as required by Law.
- (b) Transgrid must provide EnergyCo with a certificate of currency for:
- (i) the insurance policy Transgrid is required to effect under paragraph (a)(i), within 10 Business Days after the Effective Date; and
 - (ii) each insurance policy Transgrid is required to effect under paragraphs (a)(ii) and (iii), promptly after a request from EnergyCo.

16 Force Majeure

16.1 Force Majeure Event

- (a) If a party is, or considers it likely that it will be, prevented in whole or in part from carrying out its obligations under this Deed (other than an obligation to pay money) as a result of a Force Majeure Event (**Affected Party**), it must promptly after it becomes aware, or should have reasonably become aware of the Force Majeure Event, give a notice to the other party that complies with clause 16.2.
- (b) Following the notice provided under paragraph (a), and while the Force Majeure Event continues, the obligations which cannot be performed (other than an obligation to pay money) because of the Force Majeure Event will be suspended if the party giving notice has complied with its obligations under this clause 14, taken all proper precautions, due care and reasonable alternatives with the intention of avoiding the delay or failure and of carrying out its obligations under this Deed.

16.2 Force Majeure Event notice

A notice given under clause 16.1(a) must:

- (a) specify the obligations a party cannot perform;
- (b) fully describe the Force Majeure Event;
- (c) estimate the time during which the Force Majeure Event will continue; and
- (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure Event.

16.3 Remedy of Force Majeure Event

The Affected Party must remedy the Force Majeure Event to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.

16.4 Mitigation

The Affected Party must take all action reasonably practicable to mitigate any Loss suffered by a party as a result of its failure to carry out its obligations under this Deed.

16.5 Extended Force Majeure

If Transgrid is the Affected Party and such suspension of obligations continues for a continuous period exceeding three months, EnergyCo may, by written notice to Transgrid, effective immediately, terminate this Deed and Transgrid will not be entitled to any compensation, including for any Loss incurred as a result of the termination of this Deed.

17 Default and Termination

17.1 Default Notice

At any time after the occurrence of a Default, the Non-Defaulting Party may serve a Default Notice on the Defaulting Party, specifying the nature of the Default and requiring it to be remedied:

- (a) for a Transgrid Insolvency Default, within 10 Business Days;
- (b) for an EnergyCo Financial Default, within 5 Business Days; or
- (c) for a Non-Financial Default by either party, subject to clause 17.2, within 20 Business Days,

of the date of receipt of the Default Notice.

17.2 Cure period

If the Non-Defaulting Party serves a Default Notice in respect of a Non-Financial Default, then:

- (a) the Defaulting Party must prepare a detailed cure plan and provide that plan to the Non-Defaulting Party within 10 Business Days of the date of the Default Notice;
- (b) the cure plan must specify the cause of the Default, how the Defaulting Party proposes to cure the Default, the shortest period of time that is reasonably expected to be required to allow the Defaulting Party to cure the Default acting in accordance with Good Industry Practice and the actions which the Defaulting Party proposes be taken to prevent a repeat of the Default occurring in the future;
- (c) the Non-Defaulting Party may provide comments on the cure plan and if it does so, the Defaulting Party must make such amendments as are reasonable and consistent with Good Industry Practice and the Non-Defaulting Party's comments and resubmit the cure plan within 10 Business Days of receiving the Non-Defaulting Party's comments;
- (d) if the Defaulting Party has complied with the foregoing requirements in this clause 17.2 and the cure plan specifies a cure period in excess of the cure period set out in clause 17.1(c), then the Non-Defaulting Party must grant an extension of the cure period for an additional period to be reasonably determined by the Non-Defaulting Party but in any event not more than 30 Business Days;
- (e) during the cure period specified in clause 17.1(c) or as extended under paragraph (d), the Defaulting Party must diligently seek to cure the Default; and

- (f) the cure period will immediately terminate if the Defaulting Party fails to diligently pursue and implement the cure plan.

17.3 Interest for EnergyCo Financial Default

In the case of an EnergyCo Financial Default, in addition to the payment of the amount which is the subject of the EnergyCo Financial Default, EnergyCo must pay interest to Transgrid on that amount at the Bank Bill Rate plus 2% for each day from the due date for payment until the amount plus any accrued interest on that amount (calculated on actual days elapsed and a 365-day year) is paid in full.

17.4 Remedies for Default

If the Defaulting Party fails to cure the Default within the applicable cure period determined in accordance with clause 17.1 and, for a Non-Financial Default, clause 17.2, the Non-Defaulting Party may exercise any one or more of the following remedies (without prejudice to any of its other rights in this Deed):

- (a) terminate this Deed by giving a further notice of at least 20 Business Days;
- (b) suspend the obligations of the Non-Defaulting Party under this Deed until the Default is cured; or
- (c) sue the Defaulting Party for damages for that Default and exercise any other available legal and equitable remedies, including, without limitation, suing for specific performance, injunctive relief or such other relief as it deems appropriate.

17.5 Default and Disputes

Unless otherwise agreed, clause 20 will not apply to the resolution of any Dispute which arises in relation to the operation of this clause 17.

17.6 Termination of Network Operator Deed

This Deed will automatically terminate, effective immediately, if there is a termination of the Network Operator Deed.

17.7 Effect of termination

Except as expressly set out elsewhere in this Deed, if this Deed is terminated for any reason in accordance with its terms then, in addition to any other rights, powers or remedies provided by Law:

- (a) each party is released from its obligations under this Deed other than those obligations which are expressed to survive termination;
- (b) each party retains the rights it has against the other party in connection with any breach of this Deed arising before termination; and
- (c) the rights and obligations of each party under each of the following clauses continue independently from the other obligations of the parties and survive termination of this Deed:
 - (i) this clause 17.7;
 - (ii) clause 1 (Definitions and Interpretation);
 - (iii) clause 17.8 (Transgrid obligations on termination);
 - (iv) clause 18 (Liability);
 - (v) clause 21 (Confidentiality);

- (vi) clause 22 (Audit Rights);
- (vii) clause 23 (GST and Duty);
- (viii) clause 24 (Notices); and
- (ix) clauses 25.1 (Governing law and jurisdiction) to 25.6 (Cost and duty) (inclusive) and clause 25.8 (Rights cumulative).

17.8 Transgrid obligations on termination

If this Deed is terminated for any reason, Transgrid must, subject to EnergyCo having paid all PDD Services Payments that are due and payable as at the date of termination:

- (a) provide EnergyCo with copies of all deliverables and other documents and information produced or obtained in the performance of the PDD Services, which have not already been provided to EnergyCo;
- (b) assign or novate to EnergyCo (or its nominee) Transgrid's rights, or rights and obligations, in any contracts entered into by Transgrid in relation to the PDD Services;
- (c) where possible, transfer to EnergyCo (or its nominee) any authorisations or Approvals obtained by Transgrid in relation to the PDD Services; and
- (d) licence (on a non-exclusive, perpetual, royalty free basis for the purposes of the WSB PTIP, with a right to sub-licence), all Intellectual Property Rights in any deliverables and other documents and information owned by or licensed to Transgrid in relation to the PDD Services and not already held by EnergyCo.

18 Liability

18.1 No Claims against EnergyCo

To the extent permitted by Law, EnergyCo will not be liable upon any Claim by Transgrid or its Personnel arising out of or in any way in connection with:

- (a) any representations about any information provided to the applicants, the public or Transgrid in relation to the WSB PTIP;
- (b) any decision of EnergyCo in relation to the WSB PTIP, including to not proceed, or to proceed without further involvement of Transgrid; or
- (c) any Loss suffered by Transgrid in relation to the WSB PTIP.

18.2 Transgrid liability

To the extent permitted by Law, Transgrid is liable for, and indemnifies EnergyCo against, any Loss or Claim incurred or suffered by EnergyCo arising under, out of, or in connection with:

- (a) the negligence or wilful misconduct of Transgrid, its Related Bodies Corporate and each of their Personnel in connection with this Deed or in undertaking the PDD Services;
- (b) loss of, or damage to, any real or personal property of any person caused by, arising out of, or in connection with, undertaking the PDD Services or any other activity for which Transgrid is directly or indirectly responsible;
- (c) personal injury, illness or death of any person caused by, arising out of, or in connection with, undertaking the WSB PTIP or the PDD Services or any other activity for which Transgrid is directly or indirectly responsible;
- (d) any third party Claims alleging an infringement of any Intellectual Property Rights relating to the PDD Services; or

- (e) breach of its obligations in clause 21 (Confidentiality).

18.3 Transgrid liability capped

The total amount recoverable from Transgrid by EnergyCo for any Claims (however they arise):

- (a) arising out of or in any way in connection with this Deed; and
- (b) arising out of or in any way in connection with the Network Operator Deed (including for liquidated damages),

is limited to [REDACTED] in aggregate for all Claims.

18.4 Excluded Loss and Exclusions

- (a) Despite any other provision of this Deed but subject to paragraph (b), neither party is liable to the other for any Excluded Loss arising out of or in connection with this Deed in equity, under statute, tort (including negligence) or otherwise at law.
- (b) Clauses 18.1, 18.3 and 18.4(a) do not apply to, exempt, limit or restrict in any way the liability of a party in respect of:
 - (i) liability in respect of personal injury, death or loss or damage to any property to the extent caused by that party;
 - (ii) any Loss suffered or incurred by another party as a result of criminal acts, wilful misconduct, wilful breach or a breach of clause 21 on the part of that party;
 - (iii) any third party Claims alleging an infringement of any Intellectual Property Rights relating to the PDD Services; and
 - (iv) as it relates to Transgrid only, an event or circumstance in respect of which insurance proceeds:
 - (A) would have been available but for a failure by Transgrid to comply with a requirement to effect and maintain policies of insurance up to the relevant limits as required under this Deed; and
 - (B) are recovered by Transgrid pursuant to any policies of insurance required to be effected and maintained by Transgrid under this Deed.

18.5 Statutory immunities

Nothing in this Deed constitutes a waiver by Transgrid of, nor an agreement to limit or exclude any limitation of Transgrid's liability, or immunity of Transgrid from liability, under sections 119 or 120 of the National Electricity Law.

18.6 Limitation of trustees' liabilities and obligations

- (a) Despite any other provision of this Deed:
 - (i) the Trustee enters into this Deed in its capacity as trustee of the Trust and in no other capacity;
 - (ii) subject to sub-paragraph (iv), the recourse of EnergyCo or any other person to the Trustee in respect of any of the Trustee's obligations and liabilities under or in connection with this Deed is limited to the amount the Trustee actually receives in the exercise of its right of indemnity from the assets of the Trust;
 - (iii) subject to sub-paragraph (iv), if the Trustee does not receive all or any part of the money owing to it in connection with the Trustee not complying with any obligation or not paying any liability under or in connection with this Deed because the Trustee cannot obtain that money under the indemnity referred to in

- sub-paragraph (ii), EnergyCo cannot bring proceedings against the Trustee in its personal capacity to recover that money; and
- (iv) sub-paragraphs (ii) and (iii) do not apply to any obligation or liability of the Trustee under or in connection with this Deed to the extent that it is not complied with or paid because the Trustee's right to be indemnified from the Trust assets is reduced because of the Trustee's own fraud or breach of trust.
- (b) An act or omission of the Trustee (including acts and omissions that result in the Trustee not complying with any obligation or not paying any liability under or in connection with this Deed) does not constitute fraud or breach of trust by the Trustee for the purposes of this clause 18.6 to the extent to which that act or omission was caused or contributed to by any act or omission of EnergyCo.
 - (c) The Trustee represents and warrants that, and undertakes to ensure that:
 - (i) the Trustee's right of indemnity out of, and lien over, the assets of the Trust as at the Effective Date are not, and will not be, limited in any way; and
 - (ii) the Trustee does not, and will not, have any liability which may be set off against that right of indemnity.

19 Granting Security

EnergyCo agrees to consent to Transgrid granting to its financiers a security interest over this Deed.

20 Dispute Resolution

20.1 Dispute Resolution Procedures

If there is a Dispute, then:

- (a) any party seeking to resolve the Dispute must do so in accordance with the procedures set out in this clause 20 (the **Dispute Resolution Procedures**); and
- (b) compliance with the Dispute Resolution Procedures is a condition precedent to any entitlement to Claim relief or remedy (whether by way of proceedings in a court or otherwise) in respect of any Dispute.

20.2 Urgent relief

Nothing in clauses 20.1 to 20.7 prevents:

- (a) either party seeking injunctive or declaratory relief from a court in connection with the Dispute without first having to attempt to negotiate and determine the Dispute in accordance with clauses 20.1 to 20.7; or
- (b) the parties meeting at any time to seek to resolve the Dispute.

20.3 Performance to continue

The parties' obligations under this Deed will continue despite the existence of a Dispute.

20.4 Dispute Notice

Where a party first becomes aware that a Dispute has arisen, it must notify the other party in writing of the existence and nature of the Dispute (**Dispute Notice**).

20.5 Conference

- (a) Promptly after the date of receipt by the other party of the Dispute Notice (the **Notice Date**), EnergyCo's representative and Transgrid's representative must meet to discuss and attempt to resolve the Dispute.
- (b) If EnergyCo's representative and Transgrid's representative do not resolve the Dispute within 7 days after the Notice Date, they must refer the Dispute to the Nominated Executive Officer of each party.

20.6 Mediation

If the Dispute is not resolved by the Nominated Executive Officer of each party within a period of 10 Business Days after the first meeting of the Nominated Executive Officers under clause 20.5(b), the parties will within a further 10 Business Days seek to agree the process for resolving the matter through means other than litigation, such as:

- (a) the procedure and timetable for any exchange of documents and other information relating to the Dispute;
- (b) procedural rules and a timetable for the conduct of the selected mode of proceedings; and
- (c) the procedure for selection and remuneration of any mediator who may be employed by the parties.

The cost and expenses of the mediator or the conciliator will be apportioned equally between the parties.

20.7 Litigation

If the process does not resolve the matter within 10 Business Days of its commencement, or the parties cannot agree on the process for resolving a matter under clause 20.6 within 20 Business Days after the first meeting of the Nominated Executive Officers under clause 20.5, then unless otherwise agreed in writing by the parties, either party may, by written notice, terminate the dispute resolution process in clause 20.6 and may then commence court proceedings.

20.8 Equitable relief

Nothing in the Deed prevents any party from seeking equitable relief in any court.

20.9 Confidential

Any dispute resolution procedure, other than litigation, and any determination will be kept confidential and without prejudice between the parties.

20.10 Representation

The parties may be legally represented in any dispute resolution procedure. Each party will bear the costs and expenses of all counsel, witnesses and employees retained by it, except if a Dispute is determined or otherwise involves court proceedings, in which case the court may determine otherwise.

20.11 Referral not to affect obligations

The referral of a matter in accordance with this clause 20 will not affect the obligations of the parties under this Deed.

21 Confidentiality

21.1 Confidential information

Subject to clause 21.2, no party will, at any time, without the prior written consent of the other party, divulge or suffer or permit its Personnel to divulge to any person:

- (a) any of the contents of this Deed;
- (b) any information about the negotiations concerning the same;
- (c) any information that may have come to a party's knowledge in the course of such negotiations or otherwise concerning the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the other party; or
- (d) any information exchanged between the parties that:
 - (i) is by its nature confidential, or by the circumstances in which it is disclosed is confidential; or
 - (ii) is stipulated to be confidential by the disclosing party.

21.2 Exceptions

The restrictions imposed by clause 21.1 will not apply to the disclosure or use of any information that is:

- (a) required by a party's legal and other professional advisers, officers and employees and any related corporation, to the extent reasonably necessary for the party to:
 - (i) evaluate and negotiate this Deed; and
 - (ii) perform this Deed;
- (b) now or subsequently comes into the public domain (other than as a result of a breach of this Deed) or that is obtainable with no more than reasonable diligence from sources other than the parties;
- (c) required to be disclosed by Law or the listing rules of the Australian Stock Exchange Limited or other public stock exchange (if applicable);
- (d) required in or in connection with legal proceedings or dispute resolution of any kind between the parties under this Deed; and
- (e) required for any legitimate government purpose or process, including but not limited to:
 - (i) disclosure by EnergyCo to any agency, authority, instrumentality, committee, a minister or officer of the State of New South Wales or to cabinet, parliament or any parliamentary committee of New South Wales; and
 - (ii) any application under the *Government Information (Public Access) Act 2009* (NSW) or the *Freedom of Information Act 1982* (Cth) which grants a third party access to this Deed and related documents.

21.3 Information barriers

The parties acknowledge that any information disclosed under this Deed will be subject to the protocols and obligations set out in the Information Barriers Agreement.

21.4 Survival

This clause 21 survives the termination or expiration of this Deed by 5 years.

22 Audit Rights

EnergyCo shall have the right, at its own cost and by notice to Transgrid, to nominate independent public accountants that are acceptable to Transgrid and such acceptance shall not be unreasonably withheld or delayed. The nominated accountants shall have the right, at reasonable hours, to examine the books, records and charts of Transgrid only to the extent necessary to:

- (a) verify the accuracy of any statement, charge or computation made pursuant to any of the provisions of this Deed; and
- (b) to the extent that EnergyCo cannot verify such accuracy or compliance through the prudent exercise of its own internal controls.

Such books, records and charts shall be preserved for a period of 7 years from the end of this Deed to which they refer provided that if such books, records or charts are related to any facts that are disputed between the parties, then such books, records or charts shall be preserved until such dispute is settled.

Without limiting a party's rights and remedies under this Deed, if either party finds an error, or an error or deficiency is identified, the party at fault shall take prompt corrective action and advise the other party thereof. The provisions of this clause 22 shall be applicable during the Term of this Deed and for a period of 3 years thereafter.

23 GST and Duty

23.1 Recovery of GST

If GST is payable, or notionally payable, on a supply made under or in connection with this Deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. If a tax invoice is not received prior to the provision of that other consideration, the GST Amount is payable within 10 days of the receipt of a tax invoice. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

23.2 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Deed is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

23.3 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Deed, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

23.4 Cost exclusive of GST

Any reference in this Deed to a cost, expense or other similar amount is a reference to that cost, expense or other similar amount exclusive of GST.

23.5 GST groups

If a party is a member of a GST group, references to GST which the party must pay and to input tax credits to which the party is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.

23.6 Duty

Transgrid must pay all stamp, transaction, registration, financial institutions, debit and other duties and taxes (including fines, penalties and interest) that may be payable on or in connection with the execution, delivery, performance or enforcement of this Deed or any instrument or transaction contemplated by this Deed.

23.7 Survival

This clause will not merge upon completion and will continue to apply after expiration or termination of this Deed.

23.8 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) shall have the same meaning in this clause.

24 Notices

Any notice, demand, consent or other communication given or made under this Deed:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the first and last name and position or title of the sender or person duly authorised by the sender);
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or email to the address or email address below or the address or email address last notified by the intended recipient to the sender:
 - (i) to EnergyCo: Address: Level 19, 20 Bond Street, Sydney NSW 2000
Email: alexandra.finley@dpie.nsw.gov.au
Attention: Alexandra Finley
 - (ii) to Transgrid: Address: Level 1, 180 Thomas Street, Haymarket NSW 2000
Email: cosec.groupemail@transgrid.com.au
Attention: The Company Secretary
- (c) will be conclusively taken to be duly given or made and received:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by express post, to an address in the same country, 2 Business Days after the date of posting;
 - (iii) in the case of delivery by any other method of post, 6 Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country); or
 - (iv) in the case of email, at the earliest of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the intended recipient confirms receipt of the email by reply email; and

- (C) three hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that three hour period, an automated message that the email has not been delivered,

but if the result is that a notice would be taken to be given or made and received at a time that is later than 5pm on a day that is not a Business Day, in the place specified by the intended recipient as its postal address under paragraph (b), it will be conclusively taken to have been duly given or made and received at the start of business on the next Business Day in that place.

25 General

25.1 Governing law and jurisdiction

This Deed is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

25.2 Amendments or waiver in writing

- (a) A provision of or right created under this Deed may not be:
- (i) waived, except in writing signed by the party giving the waiver; or
 - (ii) amended, except in writing or by agreement evidenced in writing and signed by the parties.
- (b) A failure to exercise or a delay in exercising any right, power or remedy under this Deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

25.3 Provisions prohibited by law

If the whole or any part of a provision of this Deed is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this Deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause 25.3 has no effect if the severance alters the basic nature of this Deed or is contrary to public policy.

25.4 Counterparts

This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.

25.5 Entire agreement

This Deed:

- (a) embodies the entire understanding of the parties as to its subject matter and constitutes the entire terms agreed upon between the parties;
- (b) takes effect despite any inconsistent prior agreement between the parties; and
- (c) is immediately enforceable, subject to its own express terms.

25.6 Cost and duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Deed. All duty (including stamp duty and any fines, penalties and interest) payable on or in

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connection with this Deed, and any instrument executed under any of them must be borne by Transgrid.

25.7 Further assurances

Each party must do anything necessary (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

25.8 Rights cumulative

The rights, powers and remedies available to the parties under this Deed are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

SCHEDULES

Schedule 1

Project Definition and Design Services

1 PDD Services provided by Transgrid prior to 'Interim Commercial Operation Date' (as defined in the SIPS Service Agreement)

1.1 Project concept support

- (a) Collaborate with EnergyCo to explore the WSB PTIP at a conceptual level, including supporting EnergyCo to define the WSB PTIP, design functional elements and specify key workstreams of the WSB PTIP.
- (b) Provide network planning and technical advice and guidance through project concept phase.

1.2 Interim SIPS Service and SIPS Service technical and commercial advice

- (a) Advise on the technical and functional specifications required for the Interim SIPS Service and SIPS Service.
- (b) Advise on SIPS components and design.
- (c) Advise on control and signalling interface between SIPS control and Interim SIPS Service and SIPS Service.
- (d) Provide input to the technical and interface arrangements of the Interim SIPS Service and SIPS Service.
- (e) Advise on the connection application process for the WSB.
- (f) Advise on key commercial matters.

1.3 Generator pairing definition and commercial advice

- (a) Develop and iterate detailed generator pairing strategy options papers as key input to procurement.
- (b) Advise on generator pairing requirements to best enable the Interim SIPS Service and SIPS Service.
- (c) Advise on proposed functional specification of generator pairing and interaction with the Interim SIPS Service and SIPS Service.
- (d) Advise on control and signalling interface between SIPS control and generator pairing.
- (e) Undertake analysis and provide advice on combinations of paired generators to satisfy WSB PTIP objectives.
- (f) Advise on key commercial matters.

1.4 Commercial framework support

- (a) Provide input to the scope of project services, contract structure and operational and payment processes for the Interim SIPS Service, SIPS Service and Paired Generation Services.
- (b) Provide commentary/commercial advice on individual contracts as they are developed and negotiated.

- (c) Provide inputs from Transgrid legal team on contractual matters as service provider (to EnergyCo) and service recipient (from Interim SIPS Service and SIPS Service facilities and paired generation facilities).

1.5 Procurement of Interim SIPS Service, SIPS Service and Paired Generation Services

- (a) Assist EnergyCo with the design and preparation of tender documents and provide subject matter expertise supporting evaluation of contestable tender processes for Interim SIPS Service, SIPS Service and generator pairing.
- (b) Participate in initial tenderer briefings to support EnergyCo on relevant subjects, including connection process and respond to tenderer Q&A through procurement processes.
- (c) Support to EnergyCo during contract negotiations with preferred bidder(s).

1.6 Implementation support and advice

- (a) Provision of technical (including for planning and environmental approvals), commercial and other advice as required to enable the WSB PTIP to be implemented as intended.
- (b) Provision of support in collaboration with EnergyCo's project management team to facilitate achievement of high quality outputs within accelerated timeframes.

1.7 Policy and regulatory insights and advice

- (a) Provide analysis and advice on economic regulatory matters including design of non-contestable regulatory framework (Regulations and Guidelines).
- (b) Assist EnergyCo with development of regulatory determination applications for contestable components of the WSB PTIP SIPS (informing and supporting the recommendations of the Infrastructure Planner and subject to the Ministerial Direction).
- (c) Provide support to EnergyCo in its liaison with AEMO, the Regulator and other agencies.

1.8 Other

Other support as agreed by the parties acting reasonably to ensure the WSB PTIP is implemented as intended.

2 Services provided by Transgrid post 'Interim Commercial Operation Date' (as defined in the SIPS Service Agreement)

2.1 Policy and regulatory insights and advice

- (a) Provide analysis and advice on economic regulatory matters.
- (b) Assist EnergyCo with development of subsequent regulatory determination applications (as needed).

2.2 Commercial advice and support

- (a) Provide input on emerging issues of interest to the Infrastructure Planner.
- (b) Provide insights on the commercial framework in place to enable learnings for future priority transmission infrastructure projects.

2.3 SIPS Service technical and operational

- (a) Participate and provide advice to the operating committee established under the SIPS Service Agreement (**Operating Committee**) and any other relevant committees as contemplated in the SIPS Service Agreement and the Network Operator Deed.

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- (b) Participate in and assist with options analysis and resolution of issues that arise during the operating period.
- (c) Periodically review (eg annually) performance of the SIPS scheme and provide advice to the Infrastructure Planner.

2.4 SIPS Service innovation

Advice and assistance with any SIPS optimisation and modification regime considerations and implementation, subject to Operating Committee decisions.

2.5 Generator pairing

- (a) Periodically review (eg annually) performance of the paired generators and provide advice to the Infrastructure Planner.
- (b) Revise generator pairing strategy throughout the Term as required.
- (c) Provide major review of generator pairing performance after first 18 months of operations to enable paired generator contract extensions and new procurement to occur.

2.6 Other

Other support as agreed by the parties acting reasonably to ensure the WSB PTIP is operating as intended.

Schedule 2**Contestable and Non-Contestable Elements****1 Contestable Elements**

The services to be provided by Transgrid in relation to the Contestable Elements of the WSB PTIP are as follows:

1.1 SIPS Service

Support delivery of the Interim SIPS Service and SIPS Service (ie battery services to be provided utilising the Facility) including:

- (a) working closely with SIPS Service provider during detailed design and implementation to manage technical matters; and
- (b) facilitating commissioning of the battery site.

1.2 Paired Generation

Support delivery of the Paired Generation Services, including:

- (a) working closely with paired generation providers during detailed design and implementation to manage technical matters;
- (b) facilitating commissioning of paired generation sites; and
- (c) facilitating the addition and removal of paired generation providers as required.

2 Non-Contestable Elements

The Non-Contestable Elements of the WSB PTIP to be carried out by Transgrid are as follows:

2.1 SIPS Control

Planning, design, coding, installation, delivery, commissioning and operation of the SIPS control and communications systems and interface with the Facility, including:

- (a) development of a technical workstream budget and project schedule;
- (b) development of SIPS requirements and planning schedule;
- (c) preparation of a detailed functional specification and delivery assumptions, to be developed in consultation with AEMO;
- (d) preparation of a report detailing the scope of works for SIPS IT systems, including a detailed cost estimate, procurement plan, delivery strategy and program and risk assessments;
- (e) detailed engineering design development for all SIPS IT hardware installations and preparation of a final bill of materials;
- (f) implementation of software programs and control logic for all SIPS IT; and
- (g) delivery of site work for installation of SIPS hardware and commissioning and testing of the SIPS control scheme.

2.2 Network Augmentations

- (a) Planning and design of the network augmentation works described below.
- (b) Feasibility assessment, augmentation and delivery of the Northern Works and Southern Works.



- (c) The **Northern Works** are substation works associated with:
 - (i) Line 81 Liddell to Newcastle
 - (ii) Line 82 Liddell to Tomago
 - (iii) Line 83 Liddell to Muswellbrook
 - (iv) Line 84 Liddell to Tamworth
 - (v) Line 85 Armidale to Tamworth
 - (vi) Line 86 Armidale to Tamworth
 - (vii) Line 88 Tamworth to Muswellbrook
 - (viii) Line 8C Dumaresq to Armidale
 - (ix) Line 8E Sapphire to Armidale
 - (x) Line 8J Dumaresq to Sapphire
- (d) The **Southern Works** are:
 - (i) Transmission line works and substation works associated with:
 - (A) Line 39 Bannaby to Sydney West
 - (B) Line 3L/4 Yass to Marulan
 - (C) Line 5 Yass to Marulan
 - (ii) Substation works associated with other transmission lines in the Southern region.

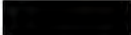


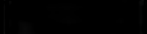

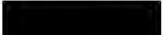
2.3 Contract Management and Administration

- (a) Contract management of the SIPS Service Agreement, including establishment and operation of the Operating Committee, management and administration of contractual regime, payment regime, monitoring and reporting.
- (b) Contract management of the paired generation services agreements, including administration of contractual regime, payment regime, monitoring and reporting.

Schedule 3**Payment Schedule**

	Milestone	PDD Services Payments
1	<p>Execution of the Project Development Deed</p> <p><i>Transgrid to provide to EnergyCo sufficient substantiating information and evidence (to EnergyCo's reasonable satisfaction) of activities and internal and external costs incurred by Transgrid in providing advice and assistance to EnergyCo with respect to the WSB PTIP, to verify the basis of those costs and demonstrate that those costs:</i></p> <ul style="list-style-type: none"> • <i>align with the scope and nature of the activities that the Infrastructure Planner required Transgrid to undertake;</i> • <i>have been incurred to assist EnergyCo in carrying out its function as Infrastructure Planner for the WSB PTIP; and</i> • <i>are reasonable and efficient.</i> 	<p>Reasonable and efficient costs incurred by Transgrid in providing advice and assistance to EnergyCo in carrying out its function as Infrastructure Planner for the WSB PTIP, as approved by EnergyCo (acting reasonably) and not exceeding a maximum amount of [REDACTED]</p>
2	<p>Execution of all transaction documents and receipt of the Non-Contestable Determination from the Regulator</p> <p><i>Includes execution of the following transaction documents:</i></p> <ul style="list-style-type: none"> • <i>Network Operator Deed;</i> • <i>SIPS Service Agreement;</i> • <i>Payment Deed; and</i> • <i>Paired Generation Services Agreements.</i> <p><i>Transgrid to provide to EnergyCo a copy of the Non-Contestable Determination from the Regulator.</i></p>	<p>[REDACTED]</p>

<p>3</p>	<p>Commercial operation (SIPS control) achieved (target date 1 November 2024)</p> <p><i>Includes delivery, testing and full implementation of the SIPS control.</i></p> <p><i>Transgrid to provide to EnergyCo:</i></p> <ul style="list-style-type: none"> • <i>a draft and final scope of work for the SIPS design, including updates to the document;</i> • <i>an inspection and testing plan, including proposed acceptance criteria for the testing of the signals, any infrastructure that is required for the operation of the control scheme, and a schedule setting out the testing to be undertaken;</i> • <i>10 Business Days' notice of any functional testing, including an opportunity for EnergyCo or its engineer to witness functional testing virtually (via Microsoft Teams or equivalent), and confirmation of completion of any functional testing;</i> • <i>a final inspection and test report showing the results of the testing and acceptance by Transgrid with justification; and</i> • <i>any written confirmation from AEMO required prior to commencing detailed design in relation to AEMO's acceptance of the SIPS design.</i> 	
<p>4</p>	<p>Practical completion of first portion of network augmentation (target date 1 November 2024)</p> <p><i>Includes design and delivery of the below network augmentation works being:</i></p> <p><i>Transmission line works associated with:</i></p> <ul style="list-style-type: none"> • <i>Line 39 Bannaby to Sydney West</i> <p><i>Substation works associated with:</i></p> <ul style="list-style-type: none"> • <i>Line 81 Liddell to Newcastle</i> • <i>Line 82 Liddell to Tomago</i> • <i>Line 83 Liddell to Muswellbrook</i> • <i>Line 84 Liddell to Tamworth</i> • <i>Line 85 Armidale to Tamworth</i> • <i>Line 86 Armidale to Tamworth</i> • <i>Line 88 Tamworth to Muswellbrook</i> • <i>Line 8C Dumaresq to Armidale</i> • <i>Line 8E Sapphire to Armidale</i> • <i>Line 8J Dumaresq to Sapphire</i> <p><i>Confirmation that all other network augmentation works are proceeding in accordance with committed timeframe / plans.</i></p>	

5	<p>Practical completion of all network augmentations (by 1 August 2025)</p> <p><i>Includes design and delivery of all network augmentation works.</i></p> <p><i>Transgrid to provide to EnergyCo:</i></p> <ul style="list-style-type: none"> • <i>a draft and final scope of work for the network augmentation works, including updates to the document; and</i> • <i>a letter advising practical completion of network augmentation works, including commissioning and energisation of upgraded assets.</i> 	
6	30 November 2025	
7	30 November 2026	
8	30 November 2027	
9	30 November 2028	
10	30 April 2030	

Schedule 4**Management Plans**

Management Plan	Mandatory Inclusions
1 Australian Industry Participation Plan	<p>A summary outlining:</p> <ul style="list-style-type: none"> (a) expected opportunities to supply key goods and services to the WSB PTIP; (b) how Transgrid will communicate project opportunities and pre-qualification requirements to potential Australian suppliers; and (c) how Transgrid will assist suppliers to develop capability and integrate into global supply chains, <p>in accordance with the <i>Australian Jobs Act 2013</i> (Cth) and <i>Modern Slavery Act 2018</i> (Cth), with supplementary details addressing the matters relevant to an Industry Participation Plan for the WSB PTIP and not otherwise covered in the Australian Industry Participation Plan (including preparation and implementation of the First Nations Participation Plan).</p>
2 Renewable Energy Sector Board Plan	<p>A summary of how Transgrid will incorporate the guidelines of the Renewable Energy Sector Board Plan into its Australian Industry Participation Plan and First Nations Participation Plan.</p>
3 First Nations Participation Plan	<p>A summary outlining Transgrid's prospective activities and commitments to employ and train Aboriginal people or use Aboriginal-owned businesses in delivering the WSB PTIP, in accordance with the Aboriginal Participation Plan referred to in the First Nations Guidelines and any NSW Government policy with respect to <u>Aboriginal participation</u>.</p>

Schedule 5

Data Storage Principles

1 Storage

- (a) Any Personal Information which is transferred as part of the Data to EnergyCo must:
- (i) be stored within Australia at all times; and
 - (ii) be accessed, used or processed only from within Australia, except with Transgrid's prior written consent.
- (b) EnergyCo must have in place appropriate technical and organisational measures to protect the Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and provide a level of security appropriate to the risk represented by the processing and the nature of the Data to be protected.

2 Recipient

The Data may be disclosed only to the following recipients or categories of recipient:

- (a) Related Bodies Corporate of EnergyCo; and
- (b) third parties, but only to assist EnergyCo to use the Data for the purposes of the WSB PTIP (which must be undertaken by EnergyCo in accordance with the terms of this Deed).

Executed and delivered as a Deed

Each person executing this Deed on behalf of a party states that they have no notice of revocation or suspension of their authority.

Executed as a deed for and on behalf of the **Energy Corporation of New South Wales** in accordance with section 8 of the *Energy and Utilities Administration Act 1987* (NSW) in the presence of:



Signature of witness

PETER WADE

Print Name



Signature of delegate

JAMES KAY

Print Name

Executed for and on behalf of the **NSW Electricity Networks Operations Pty Limited (ACN 609 169 959)** as trustee for NSW Electricity Networks Operation Trust (ABN 70 250 995 390) by its attorneys under registered power of attorney Book 4728 no 681:



Witness Signature

ANGELIQUE NESBITT

Print Name



Attorney Signature

BRIAN SALTER

Print Name

